



AF/3600

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
FAN-052/00

In Re Application Of:

Holland, et al.

Serial No.
08/992,504

Filing Date
December 17, 1997

Examiner
A. Wujciak

Group Art Unit
3632

Invention: Support Stand for Holding Display Items

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:
July 5, 2002

Applicant is a small entity under 37 CFR 1.9 and 1.27.

A verified statement of small entity status under 37 CFR 1.27:

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27662
PATENT TRADEMARK OFFICE

PATENT
Docket No.: FAN-052-00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Holland et al.

: Group Art Unit: 3632

Entitled: SUPPORT STAND FOR HOLDING
DISPLAY ITEMS

: Examiner: A. Wujciak

Serial No.: 08/992,504 ✓

Filing Date: December 17, 1997

APPEAL BRIEF

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REAL PARTY IN INTEREST

The subject application is owned by Edward W. Holland and Marie L. Anderson of Newbury Park, California.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

STATUS OF CLAIMS

Claims 75 through 94 represent all claims currently pending in the application. These claims are provided for reference in the Appeal Brief Appendix filed concurrently with this Appeal Brief.

09/09/2002 RWD/DAF1 00000038 08992504

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STATUS OF AMENDMENTS

No amendments are currently pending.

SUMMARY OF THE INVENTION

Appellants' invention is embodied in a support stand for holding flat or planar items in a vertical position. In general, as illustrated by Figure 1A and Figure 2, the support stand includes a flat, planar, rigid base 10, a pair of support members, 20 and 24, disposed on a top surface of the base, each support member having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base and opposed to each other. Further, a first support member ²⁴20 of the pair of support members, 20 and 24, is slidably engaged with the top surface of the base 10 such that the holding surface of the first support member can be slid toward or away from the holding surface of the second support member. In addition, the slidably engaged first support member ²⁴20 includes a securing apparatus 18 capable of releasably securing the first support member to the base 10 so as to prevent relative motion between that member and the base.

In another embodiment of the support stand, as illustrated by Figure 1A, the slidably engaged first support member ²⁴20 comprises an L-shaped bracket having a first leg and a second leg, with the first leg extending substantially perpendicular to the base 10 and having a face which forms the planar holding surface of the first support member, and the second leg having a face which is slidably engaged with the top surface of the base. In related embodiments, the second leg of the slidably engaged first support member ²⁴20 includes a slot 26 oriented so as to be substantially perpendicular to the face forming the planar holding surface of that support member. In one embodiment, a threaded pin 14 extends substantially perpendicular from the top surface of the base 10, with a distal end of the threaded pin extending through the slot of the support member 20. In this embodiment, a threaded knob 18 is threadably engaged with a distal end of the threaded pin 14. Consequently, when the threaded

knob 18 is tightened, the second leg of the first support member ²⁴20 is compressed against the upper surface of the base 10, thereby preventing relative motion between the first support member and the base. Conversely, when the threaded knob 18 is loosened, relative motion between the support member 20 and the base 10 is possible.

In still another embodiment, the base 10 includes a second pin 12 protruding substantially perpendicular from the top surface of the base. This second pin 12 has a distal end that extends into the slot 26 of the first support member 20, thereby preventing rotation of the first support member about the threaded pin 14 while also serving to limit the linear travel of the first support member relative to the base 10. In related embodiments, the second support member ³⁰24 is substantially a mirror image of the first support member ²⁴20. Consequently, as described above for the first support member ²⁴20, in this embodiment, the second support member ³⁰24 is also slidably engaged with the base 10, and may include any of the embodiments described with relation to the first support member. Alternately, as illustrated by Figure 1A, the second support member 24 is permanently affixed to the base.

The foregoing description of the appellants' claimed support stand is summarized from the description of the support stand beginning on Page 6, line 1 of the substitute specification provided as Amendment B, filed on June 26, 2000, and continuing through Page 8, line 19 of the substitute specification provided as Amendment B.

ISSUES

In the final Office Action dated April 5, 2002, claims 75-77, 81-82, 86-87, and 92-94 were rejected under 35 U.S.C. §102(b) as being anticipated by **Dumben** (U.S. Patent Number 1,780,782). Claims 78 and 83 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Dumben** in view of **Helfman et al.** (U.S. Patent Number 5,822,918). Claims 88 and 90-91 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Dumben**. Claim 89 was rejected under 35 U.S.C. §103(a) as being unpatentable over

Dumben in view of **Hunter** (U.S. Patent Number 4,966,340). Finally, claims 79-80 and 84-85 were objected to as being dependant upon a rejected base claim.

GROUPING OF CLAIMS

Claims 75-91 stand or fall together. In addition, claims 92-94 also stand or fall together.

THE EXAMINER'S RATIONALE

The Examiner's rationale for the rejection of claims 75-77, 81-82, 86-87, and 92-94 under 35 U.S.C. §102(b) as being anticipated by **Dumben** was stated in the final Office Action dated 4/5/2002 as follows:

"Dumben teaches a support stand (figure 2) comprising a flat planar rigid base (5) and a pair of support members (17) disposed on a top surface of the base. Each support member having a single, planar holding surface (figure 2, a). The support members are substantially perpendicular to the top surface of the base. The support members are slidably engaged (16) with the top surface of the base. A securing apparatus (19) capable of releasably securing the support members. The second support member is permanently affixed to the base (figure 2) and slidably engaged with the top surface of the base. The support members comprise an L-shaped bracket wherein the first leg (17) of bracket extends substantially perpendicular to the base and having a face forms the planar holding surface. A second leg (18) of bracket has a face, which is slidably engaged with the top surface of base. The base has bottom surface (6), which is in contact with the ground and prevent a display from tipping over. The top and bottom surfaces are in elongated rectangular-shape and a longitudinal axis, which extends substantially perpendicular to the planar holding surfaces of the support members (figure 2). The second support stand comprises a second securing member (19) having a screw.

The head of screw is retained by at least one through hole and the shaft is driven into the item being held in an upright position by the support stand (figure 1). The first leg of the support member comprises at least one through-hole disposed adjacent the distal end of the leg (18)."

The Examiner's rationale for the rejection of claims 78 and 83 under 35 U.S.C. §103(a), as being unpatentable over **Dumben** in view of **Helfman**, was stated in the final Office Action as follows:

"Dumben teaches the second leg of the first support member comprising a slot oriented (8) and the securing apparatus comprises a threaded pin (19) substantially perpendicular from the top surface of the base. The threaded pin having a distal end that extends through the slot of the first support member (figure 4).

Dumben teaches the securing apparatus but fails to teach a threaded knob. Helfman et al. teaches the securing apparatus comprising a threaded pin and a threaded knob. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added threaded knob to Dumben threaded pin as taught by Helfman et al. to provide a convenience for releasing the pin from the support member."

The Examiner's rationale for the rejection of claim 88 under 35 U.S.C. §103(a), as being unpatentable over **Dumben**, was stated in the final Office Action as follows:

"In regards to claim 88, Dumben teaches the top and bottom surfaces of the base but fails to teach they are in a square shape. It would have been obvious to the designer's choice to have modified the elongated rectangular to a square shape to provide an ornament appearance."

The Examiner's rationale for the rejection of claims 90-91 under 35 U.S.C. §103(a), as being unpatentable over **Dumben**, was stated in the final Office Action as follows:

"In regard to claim 90-91, Dumben teaches the base and support members are made of metal (col.1, line 33-40) but fails to teach they are coated with a rust-resistant plating material. It would have been obvious to the designer's choice to have added the rust-resistant plating material to the base and support members to prevent the corrosion of rust."

The Examiner's rationale for the rejection of claim 89 under 35 U.S.C. §103(a), as being unpatentable over **Dumben** in view of **Hunter**, was stated in the final Office Action as follows:

"Dumben teaches the base but fails to teach the base having at least two wheels. Hunter teaches base (40) having at least two wheels (30). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added Dumben base with wheels as taught by Hunter to provide a convenience in moving the base."

ARGUMENT

I. The 35 U.S.C. §102(b), rejection of claims 75-77, 81-82, 86-87, and 92-94.

The Examiner contends that **Dumben** describes all of the claimed elements of the appellants' invention. However, in accordance with the following discussion, the appellants contend that the Examiner has incorrectly characterized several portions of the **Dumben** reference in an attempt to show equivalence to elements of the appellants support stand.

In particular, the Examiner first suggests that "Dumben teaches a support stand (figure 2) comprising a flat planar rigid base (5)..." Further, in the Examiner's response

to the appellants' arguments filed on October 18, 2001, the Examiner states: "The examiner believes that on figure 1 in *Dumben* invention shows the base having a flat or planar surface. The flat surface on the base allows the support member to slide along the top surface of the base. If the surface on the base were not flat, it would be impossible to move the supporting member."

However, as noted by the appellants in the response to the previous Office Action, the *Dumben* base (5), as illustrated by figures 2-6, is neither flat, nor planar. In fact, as described by *Dumben* page 1, lines 60-65, the *Dumben* base is actually a hollow housing having supporting legs (6) (see also figures 2-3). While the *upper surface* of the *Dumben* base (5) is clearly flat, the base itself, having supporting legs (6) in each corner, is not itself flat and planar. In fact, one of the advantages of the appellants support stand, as discussed on page 3, line 17-19 of the substitute specification provided as Amendment B, is that the appellants support stand has a "continuous ground engaging flat base... to hold a flat display item, while remaining unobtrusive, low to the ground, and presenting no trip hazard to foot traffic." Clearly, the *Dumben* base (5) having legs (6) extending from each corner of the base is neither flat nor planar, nor is it in continuous contact with the ground. Consequently, the *Dumben* base (5) is incapable of achieving one of the stated advantages of the appellants support stand, namely, the ability to provide a continuous ground engaging flat base which does not present a trip hazard to foot traffic.

Next, the examiner suggests that *Dumben* includes "a pair of support members (17) disposed on a top surface of the base." Further, in the Examiner's response to the appellants' arguments filed on October 18, 2001, the Examiner states the following: "The examiner believes that on Figure 7 in *Dumben* invention shows the support member is disposed on the top surface of the base. Both edges of the support member are resting on the top surface of the base. The top surface of the base assists the support member edges to slide across the base."

However, in contrast to the position advanced by the Examiner, the appellants contend that as clearly illustrated by figures 1, 3, 4, 5, and 6 of the **Dumben** reference, the pair of "book ends" (17) are **not** disposed on the top surface of the base, as described and claimed by the present invention. In fact, as illustrated by figures 1, 3, 4, 5, and 6, and explained on page 2, lines 5-22 of the **Dumben** reference, the **Dumben** book ends (17) are actually coupled to and supported by blocks (16) that are slidably mounted within a longitudinal slot (8) in the base (5). These blocks (16) are in turn coupled to guide pieces (12) that are disposed on the **lower surface** of the base (5). In contrast, at least one of the appellants support members, 20 and 24, has a "flat planar surface to communicate with base plate 10... support 24 **lies flat on top of base plate 10...**" (emphasis added) as described on page 6, lines 12-18 of the substitute specification provided as Amendment B.

Next, the examiner suggests that the **Dumben** "support members are slidably engaged (16) with the top surface of the base."

However, in contrast to the position advanced by the Examiner, the appellants contend that the **Dumben** reference clearly shows in figures 1 and 3-7 that the book ends (17) are supported by **blocks (16)** which are themselves slidably engaged **within a longitudinal slot (8)** in the base (5), see **Dumben** page 2, lines 5-10. Further, the **Dumben** blocks (16) are not slidably engaged with the surface of the base (5), as they are clearly disposed within the longitudinal slot (8) in the base as illustrated by Figures 4, 5 and 6. Consequently, it is clear that the **Dumben** book ends (17) are coupled to "slidable blocks" (16) that are in turn **slidably disposed within a slot (8) in the base (5)**. In contrast, at least one support of the present invention is clearly "**slidably engaged with the top surface of the base,**" and **not** within a slot within the base as described by **Dumben**.

Next, the examiner suggests that **Dumben** includes a "securing apparatus (19) capable of releasably securing the support members." (emphasis added). Further, in

the final Office Action dated 4/5/2002, the examiner responded to the appellants arguments filed on October 18, 2002 by stating:

“On page 5, the applicant disagreed that Dumben screws do not releasably secure the support members. The examiner believes that in column 2, lines 89-100, explains that the screws (15) are adjustable screws, which allow the support member to be releasably secure to the base. The screws prevent the support member from moving when supporting a heavy load.” (emphasis added).

Note that the examiner identifies the Dumben screws (15) for the first time here, and that in both the rejection in the Office Action dated 6/19/2001, and in the final Office Action dated 4/5/2002, the rejection was based on what the Examiner terms “securing apparatus (19).” For the examiner to premise a final rejection on an element of a reference where that element is repeatedly incorrectly identified by the Examiner is inherently unfair, especially where the appellants responded to that rejection in good faith. Further, the Examiner bears the burden to factually support his rejections. This burden has not been met as a result of the Examiner’s misidentification of elements. However, because it is now unclear whether the Examiner meant to premise the rejection on the ***Dumben*** screws (19), or the ***Dumben*** screws (15), the appellants will address both cases.

First, with respect to the stated rejection that ***Dumben*** includes a “securing apparatus (19) capable of releasably securing the support members,” it is clear from a reading of the ***Dumben*** reference that elements (19) of ***Dumben*** are actually screws which are “employed for securing the slidable blocks 16 and the slidable floating member 12 to the bracing members 18 which may be secured to the book end supports 17...” (See ***Dumben*** page 2, lines 15-18). Clearly, the ***Dumben*** screws are **not** used in the manner suggested by the Office Action. In particular, the ***Dumben*** screws (19) simply hold together elements that are slidably disposed within and under the slot (8). Further, while it is true that such screws releasably secure the slidable blocks (16) and the slidable floating member (12) to the bracing members (18), it should be noted that

apparent effect of removing or loosening these screws (19) would be to cause each bracing member (18) to become unsecured from its support structure, thereby reducing any lateral support of the book ends (17). Clearly, the **Dumben** screws (19) do not operate as suggested by the Office Action, as they simply do **not** prevent relative motion between the base (5) and the book ends (17).

Second, for the sake of argument only, it will be assumed that the Examiner actually meant to identify **Dumben** screws (15) as teaching the “securing apparatus” of the appellants’ support stand. ***However, it must be noted that due to what appears to be an error by the Examiner, the appellants were never afforded an opportunity to respond to such a rejection during prosecution of the application.***

In any event, it is clear that in accordance with the following discussion, that the **Dumben** screws (15) do **not** teach the “securing apparatus” of the appellants’ support stand. In particular, as described on page 2, line 31-46, of the **Dumben** reference, when pressure is applied to the support faces of the book ends (17), the **Dumben** “adjusting screws” (15) are tilted into contact with a series of corrugated openings on the underside of the base (5), thereby “locking the book end supporting devices into adjusted position.” However, the **Dumben** reference then continues by stating that “[w]hen it is desired to release the book ends, pressure is merely exerted upon the brace members (18), thereby releasing the adjusting screws from their seat in the series of corrugated openings 14 and 14', thus allowing the book ends 17 to be moved in opposite directions.” Consequently, it is clear that the **Dumben** “adjusting screws” (15) serve to prevent motion of the book ends (17) in only one direction, when seated, with motion in the opposite direction being accomplished by merely exerting pressure on the brace members (18). Further, from this description, it should be clear that the **Dumben** “adjusting screws” (15) are not themselves meant to be adjusted, as they merely serve to engage the corrugated openings when force is applied to the support face of each book end (17).

In stark contrast, as claimed by independent claims 75 and 92, the appellants describe a "securing apparatus capable of releasably securing the support member to the base ***so as to prevent relative motion between that member and the base***" (emphasis added). The appellants securing apparatus prevents ***any*** relative motion between the support member and the base, regardless of whether pressure is applied to either side of the support member, while the ***Dumben*** "adjusting screws" (15) only prevent relative motion of the book ends (17) in one direction. Clearly, the ***Dumben*** reference does not teach the appellants securing apparatus.

Next, the examiner states that the "second support member is permanently affixed to the base (figure 2) ***and*** slidably engaged with the top surface of the base." (emphasis added)

However, in stark contrast to the position advanced by the Examiner, the appellants contend that the common usage of the term "permanently affixed" negates the possibility that an object is also simultaneously "slidably engaged." Specifically, the appellants contend that an object can be either "permanently affixed," or "slidably engaged," but not both at the same time. Further, it is clear from figure 1 and figures 3-6 of the ***Dumben*** reference, as well as from the text of the ***Dumben*** reference that the ***Dumben*** book ends (17) are adjustable along the length of the slot (8) in the base (5), and that neither book end is permanently affixed to the base.

Further, because the claims must be interpreted in light of the appellants' specification, it is clear that the "permanently affixed" and "slidably engaged" states are mutually exclusive embodiments of the appellants support stand. In particular, as illustrated by figure 1A, and described on page 6, lines 8-11 of the substitute specification provided as Amendment B, the permanently affixed support 20 is permanently attached to the base 10 and supported by a support rod 22 which is ***welded*** to both the base and the support. Clearly, this support 20 is permanently affixed to the base 10 while being incapable of slidable engagement with the base. Conversely, in an alternate embodiment, as illustrated by figure 2, and described on

page 7, lines 12-13 of the substitute specification provided as Amendment B, both supports, 24, are in slidable "**non-fixed**" engagement with the base 10.

Next, the Examiner suggests that a "second leg (18) of bracket has a face, which is slidably engaged with the top surface of base."

However, as illustrated by figure 4 of the **Dumben** reference, and as described on page 2, lines 15-22, the **Dumben** "bracing members" (18) are **not** slidably engaged with the top surface of the base. Instead, as described above, it is clear that each **Dumben** "bracing member" (18) is coupled to a slidable floating member (12) which is itself slidable disposed within the slot (8) of the base (5) of the **Dumben** book stand. In contrast, at least one support of the present invention is clearly "**slidably engaged with the top surface of the base,**" and **not** within a slot within the base as described by **Dumben**.

Next, the examiner suggests that "[t]he base has bottom surface (6), which is in contact with the ground and prevent a display from tipping over."

However, as discussed above, the element (6) of the **Dumben** reference actually comprises a set of four legs, with one leg extending from each corner of the bottom surface of the base (5). Consequently, while the base (5) clearly has a bottom surface, it is **not** in contact with the ground to "prevent a display from tipping over." Rather, it is the legs (6) which extend from the bottom of the base (5) which are in contact with the ground.

Next, the examiner suggests that "[t]he second support stand comprises a second securing member (19) having a screw. The head of screw is retained by at least one through hole and the shaft is driven into the item being held in an upright position by the support stand (figure 1)."

The Examiner is again incorrect in his interpretation of the function of the **Dumben** screw (19). Note that the Examiner previously identified screw (19) as a “securing apparatus” for preventing relative motion of the book ends (17). However, as described above by the appellants, screw (19) actually serves to secure the slidable block (12) to the support brace (18). Further, as discussed above, this is the stated and intended purpose for screw (19). Clearly, in stark contrast to the position advanced by the Examiner, the **Dumben** screw (19) is **incapable** of being “driven into the item being held in an upright position by the support stand” because, 1) as illustrated by figure 4 of the **Dumben** reference, it is clearly parallel to the book ends (17), and thus to any items held by the book ends; and 2) it extends into the support brace (18) rather than into and through the face of the book end (17).

Finally, the examiner states that the “[t]he first leg of the support member comprises at least one through-hole disposed adjacent the distal end of the leg (18).”

It is clear from the Examiner’s contention here that the Examiner is attempting to reach claim 94 of the appellants invention, which claims, *inter alia*, that a “**first leg of the support member comprises at least one through-hole disposed adjacent the distal end of the leg**” (emphasis added). However, the through-hole in question is on the **distal** end of the support member (i.e., the end extending away from the base of the appellants support stand) for the expressly claimed purpose allowing the shaft of a screw to be driven through the support member and “into the item being held in an upright position by the support stand.” In stark contrast, there is no **through hole** whatsoever in the support brace (18) of the **Dumben** book stand. In fact, the only hole anywhere near the distal end of the **Dumben** support brace (18) is the hole in which the nail (20) has been driven into the support brace (18) in order to hold the book end (17) to the support brace (see also page 2, lines 16-18).

In view of the preceding discussion, it is clear the apparatus described by the **Dumben** reference does not teach the appellants claimed invention. In fact, the appellants have pointed out a number of apparent inconsistencies and erroneous

characterizations of the elements of the **Dumben** reference which in themselves should render the rejections under 35 U.S.C. §102(b) invalid.

Consequently, in view of the foregoing argument, it is the appellant's position that the rejected claims, 75-77, 81-82, 86-87, and 92-94 are not described by the **Dumben** reference, and as such are patentable under 35 U.S.C. §102(b). The basis for this patentability is the novel claim language of independent claims 75 and 92. In particular, claim 75 claims, *inter alia*:

*

"a flat, planar, rigid base;

a pair of **support members disposed on a top surface of the base...**,
and wherein a first of the pair of support members is **slidably engaged with the top surface of the base...**; and

a securing apparatus capable of releasably securing the first support member to the base so as to prevent relative motion between that member and the base." (emphasis added)

Similarly, claim 92 claims, *inter alia*:

"a flat, planar, rigid base;

a single support member **disposed on a top surface of the base...**
slidably engaged with the top surface of the base...;

a first securing apparatus capable of releasably securing the support member to the base so as to prevent relative motion between that member and the base; and

a second securing apparatus for attaching the support member to an item placed against the planar holding face of the support member, so as to hold the item in an upright position." (emphasis added)

As such, the appellants respectfully traverse the Examiner's contention that the **Dumben** reference describes the appellants' claimed invention.

II. The 35 U.S.C. §103(a) rejection of claims 78 and 83.

The Examiner contends that claims 78 and 83 are unpatentable over **Dumben** in view of **Helfman** under 35 U.S.C. §103(a). However, in accordance with the following discussion, the appellants contend that the Examiner has incorrectly characterized several portions of the **Dumben** reference in an attempt to show equivalence to elements of the appellants support stand. Further, the **entire invention**, as claimed, must be considered in rejecting claims under 35 U.S.C. §103(a). It is the appellants' contention that the proposed **Dumben-Helfman** combination fails to teach at least one element of the appellants claimed invention.

In order to deem the appellants' claimed invention unpatentable under 35 U.S.C. §103, a prima facie showing of obviousness must be made. To make a prima facie showing of obviousness, all of the claimed elements of an appellants' invention must be considered, especially when they are missing from the prior art. If a claimed element is not taught in the prior art and has advantages not appreciated by the prior art, then no prima facie case of obviousness exists. The Federal Circuit court has stated that it was error not to distinguish claims over a combination of prior art references where a material limitation in the claimed system and its purpose was not taught therein (In Re Fine, 837 F.2d 107, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Again, it appears that the Examiner has incorrectly characterized the **Dumben** screw (19) in rejecting claims 78 and 83 under 35 U.S.C. §103(a). In particular, the examiner explained his rejection in the final Office Action by stating that "Dumben teaches the second leg of the first support member comprising a slot oriented (8) and the securing apparatus comprises a threaded pin (19) substantially perpendicular from the top surface of the base. The threaded pin having a distal end that extends through the slot of the first support member (figure 4)." The Examiner then continued by stating that "Dumben teaches the securing apparatus but fails to teach a threaded knob. Helfman et al. teaches the securing apparatus comprising a threaded pin and a threaded knob. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have

added threaded knob to Dumben threaded pin as taught by Helfman et al. to provide a convenience for releasing the pin from the support member.”

However, as noted above, these screws (19) are **not** a “securing apparatus” as described and claimed by the present invention. In fact, the **Dumben** screws (19) merely act to help secure the slidable blocks (16) and the slidable floating member (12) **to the bracing members (18)**. Further, **it should be noted that the apparent effect of removing or even loosening these screws (19) would be to cause each bracing member (18) to become unsecured from its support structure, thereby likely reducing any lateral support of the book ends (17)**. Clearly, the **Dumben** screws do not operate as suggested by the Office Action, as they simply do **not** prevent relative motion between the base and the book ends (17).

Further, the addition of the **Helfman** threaded knob to the **Dumben** screws (19) would likely make it easier to assemble or disassemble the **Dumben** apparatus. However, such a combination has nothing whatsoever to do with the claimed securing apparatus of the present invention. Thus, as ease of assembly and disassembly of particular components of the present invention using a threaded knob is not a claimed element of the present invention, it is clear that the addition of the **Helfman** threaded knob to the **Dumben** screws (19) in no way operates to make the securing apparatus of the present invention obvious. In particular, tightening or loosening of the **Dumben** screws (19), either with or without the assistance of the **Helfman** threaded knob, does nothing whatsoever to prevent the **Dumben** book ends (17) from “sliding in relation to the base.” In stark contrast, the securing apparatus of the appellants’ invention, as described above, clearly serves to prevent the support member from sliding in relation to the base when that securing apparatus is tightened. Conversely, the securing apparatus of the appellants’ invention, as described above, clearly serves to allow the support member to slide in relation to the base when the securing apparatus is loosened.

In claim 78, the appellant claims, *inter alia*, "... the securing apparatus comprises, *a threaded pin protruding substantially perpendicular from the top surface of the base... and a threaded knob which is threadably mated to the threaded pin and which in a disengaged mode allows the first support member to be slid in relation to the base, and in an engaged mode... prevents the first support member from sliding in relation to the base*" (emphasis added). In stark contrast to the position advanced by the Examiner, it is clear that in view of the preceding discussion that the proposed **Dumben-Helfman** combination, with a threaded knob being added to the **Dumben** screws (19), fails to teach a securing apparatus for preventing relative motion between the **Dumben** book ends (17) and the base (5). Further, it appears that the Examiner has incorrectly characterized the clearly expressed use and operation of the **Dumben** screws (19) in attempting to equate those screws to the appellants securing device.

Similarly, in claim 83, the appellant claims, *inter alia*, "...the second securing apparatus comprises, *a threaded pin protruding substantially perpendicular from the top surface of the base... and a threaded knob which is threadably mated to the threaded pin and which in a disengaged mode allows the second support member to be slid in relation to the base, and in an engaged mode... prevents the second support member from sliding in relation to the base*" (emphasis added). Again, in stark contrast to the position advanced by the Examiner, it is clear that in view of the preceding discussion that the proposed **Dumben-Helfman** combination, with a threaded knob being added to the **Dumben** screws (19), fails to teach a securing apparatus for preventing relative motion between the **Dumben** book ends (17) and the base (5). Further, it appears that the Examiner has incorrectly characterized the clearly expressed use and operation of the **Dumben** screws (19) in attempting to equate those screws to the appellants securing device.

In view of the preceding discussion, it is clear that the proposed **Dumben-Helfman** combination, with a threaded knob being added to the **Dumben** screws (19), fails to teach the claimed securing apparatus of the appellants support stand. Accordingly, no prima facie case of obviousness has been established in accordance with the holdings of *In Re*

Fine. This lack of a prima facie showing of obviousness means that the rejected claims are patentable under 35 U.S.C. §103(a). The basis for this patentability is the novel claim language of dependent claims 78 and 83. In particular, claim 78 claims, *inter alia*:

“The support stand of Claim 77... *wherein the securing apparatus comprises, a threaded pin... and*

a threaded knob which is threadably mated to the threaded pin and which in a disengaged mode allows the first support member to be slid in relation to the base, and in an engaged mode wherein the knob is rotated down on the pin so as to compress the second leg of the first support member against the top surface of the base, prevents the first support member from sliding in relation to the base.”
(emphasis added).

Similarly, claim 83 claims, *inter alia*:

“The support stand of 82, wherein... *the second securing apparatus comprises,*

a threaded pin... and

a threaded knob which is threadably mated to the threaded pin and which in a disengaged mode allows the second support member to be slid in relation to the base, and in an engaged mode wherein the knob is rotated down on the pin so as to compress the second leg of the second support member against the top surface of the base, prevents the second support member from sliding in relation to the base.
(emphasis added)

Finally, the appellants contend that there is no valid motivation to combine the ***Dumben*** and ***Helfman*** references. In particular, as described in the M.P.E.P., Section 706.02(j), in order to deem the appellants claimed invention unpatentable under 35 U.S.C. §103(a), ***there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings.***

Without a motivation to combine, a rejection based on a *prima facie* case of obviousness is improper (*In re Rouffet*, 149 F.3d 1350, 1357, (Fed. Cir. 1998)).

The Examiner clearly stated his motivation for combining the **Dumben** and **Helfman** references on page 7 of the final Office Action, dated 4/5/2002, as follows:

“In this case, the examiner believes that it would be obvious to combine the two references (Dumben in view of Helfman) to have replaced Dumben’s screws with Helfman threaded knob to provide a convenience for tighten the support member to the base.”

However, as discussed above, tightening of the **Dumben** screws (either (19) or (15)) in no way serves to “tighten the support member to the base.” In particular, as described above, the **Dumben** screws (19) are “employed for securing the slidable blocks 16 and the slidable floating member 12 to the bracing members 18 which may be secured to the book end supports 17...” (See **Dumben** page 2, lines 15-18). Consequently, rather than serving to “tighten the support member to the base, the **Dumben** screws (19) simply hold together elements that are slidably disposed within and under the slot (8). In stark contrast, again as described above, the securing apparatus of the applicants claimed invention serves to prevent relative motion between the support member and the base when the securing apparatus is tightened.

Similarly, with respect to the **Dumben** screws (15), as described on page 2, line 31-46, of the **Dumben** reference, when pressure is applied to the support faces of the book ends (17), the **Dumben** “adjusting screws” (15) are tilted into contact with a series of corrugated openings on the underside of the base (5), thereby “locking the book end supporting devices into adjusted position.” Clearly, these screws (15) are **not** tightened for the purpose of securing the book ends (17) to the base (5).

Consequently, because neither of the **Dumben** screws (19) or (15) referenced by the Examiner serve to tighten to book ends (17) to the base (5), the Examiner’s

rationale for a motivation for combining the **Dumben** and **Helfman** references is invalid. Therefore, any combination of the **Dumben** and **Helfman** references is improper, as there is no valid motivation to combine these references.

Therefore, in view of the foregoing argument, it is the appellant's position that the rejected claims, 78 and 83 are not obvious in view of the proposed **Dumben-Helfman** combination reference, and as such are patentable under 35 U.S.C. §103(a). Further, it has also been shown that the proposed **Dumben-Helfman** combination reference is not a valid combination, as there is no motivation to combine these references. Consequently, the rejection of claims 78 and 83 under 35 U.S.C. §103(a) is improper. In addition, it should be noted that claims 78 and 83 are dependent from independent claim 75. The Office Action has made no suggestion that independent claim 75 is unpatentable under 35 U.S.C. §103(a). Further, in accordance with the preceding discussion, claim 75 has been shown to be allowable under 35 U.S.C. §102(b). Consequently, as there is no appropriate outstanding rejection of the parent claim, any rejection of the dependent claim is moot. Thus, the appellant respectfully traverses the Examiner's contention that the rejected claims are obvious under 35 U.S.C. §103(a) in view of the proposed **Dumben-Helfman** combination reference.

III. The 35 U.S.C. §103(a) rejection of claims 88 and 90-91.

With respect to the rejections of claims 88 and 90-91 under 35 U.S.C. §103(a) as being unpatentable over **Dumben**, it should be noted that claims 88 and 90-91 are dependent from independent claim 75. The Office Action has made no suggestion that independent claim 75 is unpatentable under 35 U.S.C. §103(a). Further, in accordance with the preceding discussion, claim 75 has been shown to be allowable under 35 U.S.C. §102(b). Consequently, as there is no appropriate outstanding rejection of the parent claim, any rejection of the dependent claim is moot. Therefore the Applicant respectfully traverses the rejection of claims 88 and 90-91 under 35 U.S.C. §103(a) in view of the above discussion.

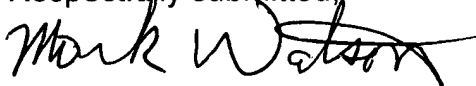
IV. The 35 U.S.C. §103(a) rejection of claims 88 and 90-91.

Similarly, with respect to the rejection of claim 89 under 35 U.S.C. §103(a) as being unpatentable over **Dumben**, in view of **Hunter** (U.S. Patent No. 4,966,340) it should be noted that claim 89 is dependent from independent claim 75. The Office Action has made no suggestion that independent claim 75 is unpatentable under 35 U.S.C. §103(a). Further, in accordance with the preceding discussion, claim 75 has been shown to be allowable under 35 U.S.C. §102(b). Consequently, as there is no appropriate outstanding rejection of the parent claim, any rejection of the dependent claim is moot. Therefore the Applicant respectfully traverses the rejection of claim 89 under 35 U.S.C. §103(a) in view of the above discussion.

SUMMARY

For the foregoing reasons, it is submitted that the Examiner's rejection of Claims 75-78, 81-83, and 86-94 and objection to claims 79-80 and 84-85 was erroneous. As such, reversal of the Examiner's decision is respectfully requested.

Respectfully submitted,



Mark A. Watson

Registration No. 41,370

Attorney for Appellants

Lyon, Harr and DeFrank, LLP
300 Esplanade Drive, Suite 800
Oxnard, California 93030
(805) 278-8855



PATENT
Docket No.: FAN-052-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Group Art Unit: 3632
Holland et al.	:	
	:	Examiner: A. Wujciak
Entitled: SUPPORT STAND FOR HOLDING	:	
DISPLAY ITEMS	:	
	:	
Serial No.: 08/992,504	:	
	:	
Filing Date: December 17, 1997	:	

APPEAL BRIEF APPENDIX

The following Claims 75-94 represent all the claims involved in the appeal of the above-identified application and are provided in accordance with the requirements of 37 CFR 1.192(c)(7):

Claim 75. A support stand, comprising:

a flat, planar, rigid base;

a pair of support members disposed on a top surface of the base, each support member having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base and opposed to each other, and wherein a first of the pair of support members is slidably engaged with the top surface of the base such that the holding surface of the first support member can be slid toward or away from the holding surface of the second support member; and

a securing apparatus capable of releasably securing the first support member to the base so as to prevent relative motion between that member and the base.

Claim 76. The support stand of Claim 75, wherein the second support member is permanently affixed to the base.

Claim 77. The support stand of Claim 75, wherein the first support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the first support member, and a second leg of which has a face which is slidably engaged with the top surface of the base.

Claim 78. The support stand of Claim 77, wherein the second leg of the first support member comprises a slot oriented so as to be substantially perpendicular to the face forming the planar holding surface of the first support member, and wherein the securing apparatus comprises,

a threaded pin protruding substantially perpendicular from the top surface of the base which has a distal end that extends through the slot of the first support member, and

a threaded knob which is threadably mated to the threaded pin and which in a disengaged mode allows the first support member to be slid in relation to the base, and in an engaged mode wherein the knob is rotated down on the pin so as to compress the second leg of the first support member against the top surface of the base, prevents the first support member from sliding in relation to the base.

Claim 79. The support stand of Claim 78, further comprising a second pin protruding substantially perpendicular from the top surface of the base which has a distal end that extends into the slot of the first support member, whereby the second pin prevents rotation of the first support member about the threaded pin.

Claim 80. The support stand of Claim 79, wherein the second pin is disposed further outward on the base than the threaded pin such that the second pin limits how far the first support member can be slid toward the second support member and the threaded pin limits how far the first support member can be slid away from the second support member.

Claim 81. The support stand of Claim 75, wherein the second support member is also slidably engaged with the top surface of the base such that the holding surface of the second support member can be slid toward or away from the holding surface of the first support member, and wherein the support stand further comprises a second securing apparatus capable of releasably securing the second support member to the base so as to prevent relative motion between the second member and the base.

Claim 82. The support stand of Claim 81, wherein the second support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the second support member, and a second leg of which has a face which is slidably engaged with the top surface of the base.

Claim 83. The support stand of 82, wherein the second leg of the second support member comprises a slot oriented so as to be substantially perpendicular to the face forming the planar holding surface of the second support member, and wherein the second securing apparatus comprises,

a threaded pin protruding substantially perpendicular from the top surface of the base which has a distal end that extends through the slot of the second support member, and

a threaded knob which is threadably mated to the threaded pin and which in a disengaged mode allows the second support member to be slid in relation to the base, and in an engaged mode wherein the knob is rotated down on the pin so as to compress the second leg of the second support member against the top surface of the base, prevents the second support member from sliding in relation to the base.

Claim 84. The support stand of Claim 83, further comprising a second pin protruding substantially perpendicular from the top surface of the base which has a distal end that extends into the slot of the second support member, whereby the second pin prevents rotation of the second support member about the threaded pin.

Claim 85. The support stand of Claim 84, wherein the second pin is disposed further outward on the base than the threaded pin such that the second pin limits how far the second support member can be slid toward the first support member and the threaded pin limits how far the second support member can be slid away from the first support member.

Claim 86. The support stand of Claim 75, wherein the base has a bottom surface which is in contact with the ground or floor, and wherein the base is of sufficient size and shape so that whenever a display item is held in an upright position between the planar holding surfaces of the support members, it is prevented from tipping over.

Claim 87. The support stand of Claim 86, wherein the top and bottom surfaces of the base have an elongated rectangular-shape and a longitudinal axis which extends substantially perpendicular to the planar holding surfaces of the support members.

Claim 88. The support stand of Claim 86, wherein the top and bottom surfaces of the base have a substantially square shape.

Claim 89. The support stand of Claim 75, further comprising at least two wheels, each of which is attached to a bottom surface of the base, so as to allow the support stand to be rolled about.

Claim 90. The support stand of Claim 75, wherein the base is made of metal and coated with a rust-resistant plating material.

Claim 91. The support stand of Claim 75, wherein each support member is made of metal and coated with a rust-resistant plating material.

Claim 92. A support stand, comprising:

a flat, planar, rigid base;

a single support member disposed on a top surface of the base having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base, and wherein the support member is slidably engaged with the top surface of the base such that the holding surface of the support member can be slid inward or outward on the base;

a first securing apparatus capable of releasably securing the support member to the base so as to prevent relative motion between that member and the base;
and


a second securing apparatus for attaching the support member to an item placed against the planar holding face of the support member, so as to hold the item in an upright position.

Claim 93. The support stand of Claim 92, wherein the support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the support member, and a second leg of which has a face that is slidably engaged with the top surface of the base.

Claim 94. The support stand of Claim 93, wherein first leg of the support member comprises at least one through-hole disposed adjacent the distal end of the leg, and wherein the second securing apparatus comprises a screw, the head of which is retained by the at least one through-hole and the shaft of which is driven into the item being held in an upright position by the support stand.

Lyon, Harr and DeFrank, LLP
300 Esplanade Drive, Suite 800
Oxnard, California 93030
(805) 278-8855

Respectfully submitted,


Mark A. Watson
Registration No. 41,370
Attorney for Applicant